

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

POLARIS SALES INC.,)	
)	
Plaintiff,)	Case No. 08 CV 1924
)	
v.)	Judge Zagel
)	
HSBC BANK NEVADA, N.A.,)	Magistrate Judge Mason
)	
Defendant.)	

**POLARIS SALES INC.'S MOTION FOR LEAVE TO FILE
ADDITIONAL STATEMENTS OF FACT *NUNC PRO TUNC***

Pursuant to Local Rule 56.1(b)(3)(C), plaintiff Polaris Sales Inc. ("Polaris") respectfully asks this Court for leave to file additional statements of fact in its response to Defendant HSBC Bank Nevada's ("HSBC") Statement of Uncontested Facts *nunc pro tunc*. In support of its motion, Polaris states as follows:

1. When it filed its Rule 56.1(b)(3) Response in Opposition to Defendant's Motion for Summary Judgment, Polaris inadvertently did not contemporaneously request leave to file paragraphs 43 through 76 of its Statements of Additional Facts that Require Denial of Motion.¹ (See "Polaris Statements," Doc. No. 29)

2. This case involves detailed and complex subject matter regarding the parties' revolving credit program for retail customers of Polaris vehicles and related goods and services. (See, e.g., Complaint, Doc. No. 1) The plaintiff's seventy-four statements of material fact are necessary and appropriate in order to fully and fairly inform the Court regarding the issues presented by defendant's motion and grounds why it must be denied. (See L.R. 56.1, Committee Comments)

¹ Paragraphs 33 and 34 were intentionally left blank.

3. The additional statements requested by Polaris include sixteen statements concerning the terms of the Agreement, its schedules, and the Amendment, including excerpts concerning the purpose of the Agreement (Polaris Statement (Doc. No. 29), ¶¶ 43-45)), and excerpts illustrating how the Agreement addresses such relevant issues as “discretion.” (*Id.*, ¶¶ 46-58) The paragraphs also include details of the claims raised in the Complaint, including HSBC’s wrongful conduct in breach of the express and implied terms of the Agreement. (*Id.*, ¶¶ 59-76)

4. Twenty-eight of the thirty-four additional facts presented by Polaris address either the Complaint or the Agreement, both of which are documents HSBC attached to its Rule 56.1 Statement of Uncontested Facts. (*Id.*, ¶¶ 43-58, 62-64, 67-70, 72-76; Doc. No. 27, Ex. A, Ex. C) In its reply brief, HSBC now seeks to exclude individual references to its own attachments, in effect asking the Court to read some portions of its attachments but not others. Polaris requests the opportunity to discuss these documents that HSBC saw fit to include in support of its motion. (Motion to Strike, Doc. No. 31; Reply, Doc. No. 30² at 11-12) HSBC cannot reasonably claim to be unduly prejudiced, if prejudiced at all, by Polaris receiving leave to present these items more fully in its opposition to the motion for summary judgment.

5. Under these circumstances, leave to file these additional statements of fact *nunc pro tunc* is appropriate. *See Zahn v. County of Cook*, 2007 U.D. Dist. LEXIS 23430 at *4, n.1 (N.D. Ill. Mar. 28, 2008).

6. Admitting these additional statements of fact is consistent with the purpose of Local Rule 56.1 of limiting the summary judgment stage to the consideration of material facts. Since discovery has not commenced in this case, Polaris cannot include citations to evidence

² Doc. No. 30 and Doc. No. 32 appear to be identical filings of HSBC’s reply brief.

gathered in discovery, immaterial or otherwise. Polaris seeks to direct the Court's attention to vital portions of the Agreement and other material facts that warrant the denial of the summary judgment motion.

WHEREFORE, Polaris Sales, Inc. respectfully requests that the Court grant it leave to file its additional statements of material fact *nunc pro tunc* and provide any other relief it deems just and proper.

Date: July 15, 2008

POLARIS SALES INC.

By: /s/ Thomas M. Lynch
One of its attorneys

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CERTIFICATE OF SERVICE

James J. Hegarty, an attorney, hereby certifies that he caused a copy of the foregoing Notice of Motion and Polaris Sales Inc.'s Motion For Leave to File Additional Statements of Fact *Nunc Pro Tunc* to be served upon all counsel of record by ECF on July 15, 2008.

/s/ James J. Hegarty